IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8881 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

KIRITKUMAR PUNJALAL BAROT

Appearance:

1. Special Civil Application No. 8881 of 2002

MR ASHISH M DAGLI for Petitioner No. 1

MRS YOGINI V PARIKH for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 29/04/2003

ORAL JUDGEMENT

Heard learned advocate Mr. A.M. Dagli for the petitioner and Ms. Yogini Parikh, learned advocate for

respondent workman.

Rule. Service of rule is waived by Ms. Yogini Parikh, learned advocate for the respondent workman. In the facts and circumstances of the case and with the consent of the learned advocates for the parties, the matter has been taken up for final hearing today itself.

In this petition, the petitioner has challenged the order passed by the Controlling Authority in Case No. 12 of 2001 dated 6th September, 2001 whereunder the petitioner has been directed by the Controlling Authority to pay to the respondent workman an amount of Rs. 3,01,881.00 within thirty days. This order of the controlling authority was also challenged by the petitioner before the appellate authority by filing an appeal no. 46 of 2001 and the appellate authority has confirmed the said order passed by the controlling authority and has directed the petitioner to pay the said amount to the respondent workman with ten per cent interest per annum from the date of receipt of the said order dated 23rd July, 2002. In this petition, both the orders are challenged by the petitioner. It was pointed out by the learned advocate Mr. Dagli that as per the directions issued by the controlling authority, while filing the appeal before the appellate authority, the petitioner has deposited the entire amount.

It was submitted by the learned advocate Mr. Dagli that the amount in question has not been paid to the respondent workman only on the ground that the respondent has been occupying the quarter of the corporation unauthorizedly and has not vacated the same though he has retired and has not paid the market rent and, therefore, the corporation is justified in withholding the amount in question. He has relied upon the decision in case of Vajir Chand which was also cited before the controlling authority as reflected from page 32. After considering the said decision, the controlling authority as well as the appellate authority has passed the impugned orders that the respondent is entitled for the amount of gratuity as a matter of legal right under section 13 of the Payment of Gratuity Act as the amount of gratuity cannot be attached and, therefore, protection for such amount has been granted under the Payment of Gratuity Act and, therefore, both the authorities have come to the conclusion that the petitioner corporation is not entitled to withheld the said amount on the ground that the respondent has occupied the quarter illegally unauthorizedly and the market rent has not been paid to the corporation. Thus, this aspect has been considered

by the authorities below wherein the authorities below have considered that separate proceedings are going on between the parties under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act.

I have considered the submissions made by the learned advocates for the parties. I have also considered the orders passed by the authorities below. I have also considered the decision reported in 2000 (Suppl) (1) JT SC page 515 which has been cited by Mr. Dagli before this Court. In the said decision, it has been observed that the amount of market rent can be recovered from the retirement benefits of the workman or employee. Said decision has been considered in subsequent decision by the apex court in case of Gorakhpur University and Others v. Dr. Shitla Prasad Nagendra and Otehrs reported in AIR 2001 SC 2433. Relevant observations made by the Apex Court in para 5 of the said decision are reproduced as under:

"5. We have carefully considered the submissions on behalf of the respective parties before us. The earlier decision pertaining to this very University reported in 1996 (2) ESC 211 (All) (supra) is that of a Division Bench rendered after considering the principles laid down and also placing reliance upon the decisions of this Court reported in (1994) 6 SCC 589 (supra) which, in turn, relied upon earlier decisions in State of Kerala v. M. Padmanabhan Nair (1985) 1 SCC 429 : (AIR 1985 SC 356 : 1985 Lab IC 664) and AIR 1981 AC 212 (supra). This Court has been repeatedly emphasizing the position that pension and gratuity are no longer matters of any bounty tobe distributed by Government but are valuable rights acquired and property in their hands and any delay in settlement and disbursement whereof should be viewed seriously and dealt with severely by imposing penalty in the form of payment of interest. Withholding of quarters allotted, while in service, even after retirement without vacating the same has been viewed to be not a valid ground to withhold the disbursement of the terminal benefits. Such is the position with reference to amounts due towards provident fund, which is rendered immune from attachment and deduction or adjustment as against any other dues from the employee. In the context of this, mere reliance on behalf of the appellant upon yet another decision of a different Division Bench of

the very High Court rendered without taking note of any of the earlier decisions of this court but merely proceeding to decide the issue upon equitable considerations of balancing conflicting claims of respective parties before it does not improve the case of the appellant any further. Reliance placed for the appellant University on the decision reported in 2000 Suppl (1) JT (SC) 515 does not also sound well on the facts and circumstances of this case. It is not clear from the facts relating to the said decision as to whether the person concerned was allowed to remain in occupation on receipt of the normal rent as in the present case. As noticed earlier, the case of the contesting respondent in this case is that the University authorities regularly accepted the rent at normal rates every month from the petitioner till the quarters was vacated and that in spite of request made for the allotment of the said quarters in favour of the son of the respondent, who is in the service of the University, no decision seems to have been taken and communicated though it is now claimed in the Court proceedings that he is not entitled to this type of accommodation. Further, the facts disclosed such as the resolutions of the University resolving to waive penal rent from all Teaches as well as that of the Executive Council dated 18.7.1994 and the actual such waiver made in the case of several others cannot be easily ignored. The lethargy shown by the authorities in not taking any action according to law to enforce their right to recover possession of the quarters from the respondent or fix liability or determine the so called penal rent after giving prior show cause notice or any opportunity to him before ever even proceeding to recover the same from the respondent renders the claim for penal rent not only a seriously disputed or contested claim but the University cannot be allowed to recover summarily the alleged dues according to its whims in a vindictive manner by adopting different and discriminatory standards. The facts disclosed also show that it is almost one year after the vacation of the quarter and that too on the basis of certain subsequent orders increasing the rates of penal rent, the applicability of which to the respondent itself was again seriously disputed and to some extent justifiably too, the appellant cannot be held to be entitled to recover by way of adjustment such

> disputed sums or claims against the pension, gratuity and provident fund amounts indisputably due and unquestionably payable to the respondent before us. The claims of the University cannot be said tobe e in respect of an admitted or conceded claim or sum due. Therefore, we are of the view that no infirmity or illegality could be said to be vitiated the order, under challenge in this appeal, to call for our interference, apart from the further reason that the disbursements have already been said to have been made in this case as per the decision of the High Court."

Thus, in the aforesaid decision of Gorakhpur University, after considering the decision reported in 2000 Suppl (1) JT (SC) 515, the Hon'ble apex court has in no uncertain terms, held the decision reported in 2000 Suppl (1) JT (SC) 515 does not also sound well on the facts and circumstances of the said case before the apex court.

In view of the decision of the Hon'ble apex court in case of Gorakhpur University and Others v. Dr. Shitla Prasad Nagendra and Otehrs reported in AIR 2001 SC 2433 and also considering the observations made in para 5 of the said decision, I am of the view that the decision reported in 2000 Suppl (1) JT (SC) 515 is of no avail to the petitioner and the same would not render any assistance to the petitioner, in view of the recent pronouncement of the Hon'ble Apex court in case of Gorakhpur University (supra) and also in the facts and circumstances of the present case. The case reported in 2000 Suppl (1) JT (SC) 515 was considered by the controlling authority as well as the appellate authority and and according to my opinion, both the authorities below were right in making the orders in question in granting the amount of gratuity in favour of the respondent workman and they have not committed any jurisdictional error in passing such an order in favour of the respondent workman. Mr. Dagli has not been able to point out any procedural irregularity or infirmity in the orders passed by the controlling authority as confirmed by the appellate authority. I am, therefore, of the opinion that the orders in question does not require any interference in exercise of the extra ordinary jurisdiction under Article 226/227 of the Constitution of India. Thus, there is no substance in this petition and the same is required to be rejected. Same is, therefore, rejected. Rule is discharged. There shall be no order as to costs.

In the peculiar facts and circumstances of the case, it is directed to the controlling authority under the Payment of Gratuity Act, in respect of the case no. 12 of 2001 dated 6th September, 2001 as well as the appellate authority under the Payment of Gratuity Act in respect of appeal no. 46 of 2001 dated 23rd July, 2002 to pay to the respondent workman an amount of Rs. 3,01,881.00 (Rupees three lacs one thousand eight hundred eighty one only) deposited by the petitioner corporation in respect of the amount of gratuity which is due and payable to the respondent workman within one month from the date of receipt of copy of this order. Office is directed to sent writ of this order immediately to both the authorities referred to hereinabove. Over and above that, respondent No.1 is also permitted to serve the said authorities by way of Direct Service.

Dt. 29.4.2003. (H.K. Rathod,J.)